

ENTERED ON DOCKET
9-28-04

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	CASE NO. 99-66017-JB
ICHIBAN RECORDS, INC.)	
)	CONSOLIDATED ESTATES
Debtor.)	
ICHIBAN INTERNATIONAL)	ADVERSARY PROCEEDING
CORPORATION,)	NO. 6268-JUDGE BIHARY
)	
Debtor.)	
ICHIBAN PUBLISHING)	
CORPORATION,)	
)	
Debtor.)	
ICHIBAN DISTRIBUTION, INC.)	
CORPORATION,)	
)	
Debtor.)	
SKY RECORDS, INC.,)	
)	
Debtor.)	
DM RECORDS, INC.)	
)	
Movant,)	
)	
vs.)	
)	
COLLIPARK RECORDS, COLLIPARK)	
MUSIC, MICHAEL A. CROOMS,)	
MICHAEL A. CROOMS P/K/A)	
DJ SMURF)	
)	
Respondents.)	

ORDER

This matter is before the Court on the "MOTION TO ENFORCE ASSIGNMENT OF EXECUTORY CONTRACTS" (the "Motion to Enforce"), filed on June 18, 2004, by DM Records, Inc. ("DM").

By Order and Notice served on June 17, 2004 (the "Motion to Enforce Notice"), the Respondents to the Motion, U.S. Trustee and Leon S. Jones in his capacity as Chapter 7 Trustee of the consolidated estate of Ichiban were notified of the Motion to Enforce, that a deadline of June 23, 2004 had been established to file objections to the Motion to Enforce and that a hearing had been scheduled for August 4, 2004 to consider any objections to the Motion to Enforce.

DM's Motion to Enforce requested that this Court enforce its Order dated September 24, 2001 (the "Assignment Order") which approved the Trustee's Motion to Assume and Assign Executory Contracts (the "Assignment Motion") which was filed on July 31, 2001. The Assignment Motion sought this Court's approval of the assumption and assignment of executory contracts in the Ichiban estate to DM as the purchaser of the Ichiban assets. DM asserted in the Motion to Enforce that Respondents were parties to certain executory contracts with Ichiban which had been transferred to DM pursuant to the Assignment Motion and this Court's Order dated September 24, 2001. DM asserted in the Motion to Enforce that Respondents had breached the executory contracts to which they were a party and which had been transferred to DM as assets of the Ichiban estate.

More specifically, DM asserted in the Motion to Enforce

that Respondent ColliPark Records was refusing to fulfill its obligations as set forth in an exclusive distribution agreement between ColliPark Records and Ichiban (the "Collipark Agreement") and that Respondent Michael Crooms p/k/a DJ Smurf ("Crooms") had failed to fulfill his obligations as set forth in an exclusive recording agreement between Crooms and Ichiban (the "Crooms Agreement") (collectively the "Agreements"). Respondents filed a Motion to Dismiss DM's Motion to Enforce on June 22, 2004, asserting that jurisdiction was not proper in this Court.

The Motion to Enforce came before the Court at a hearing on August 4, 2004. The following persons made appearances at the hearing: Leon S. Jones as attorney for the Chapter 7 Trustee, Laura E. Woodson as attorney for the Respondents and Karl M. Braun as attorney for DM.

After reviewing the objections, any evidence proffered or presented at the hearing, representations and offers of proof made by counsel and argument of counsel, and good cause appearing therefore;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Because the administration of the Ichiban estate has essentially been completed and pursuant to the Trustee's announcement that he has distributed all funds and that nothing

in the outcome of litigation currently pending in New York between the parties hereto would possibly affect the administration of the Ichiban estate or any distribution to creditors, the Court declines jurisdiction to enforce the Agreements assigned to DM as assets of the Ichiban estate.

B. However, after proffer from counsel, the Court desires the record to be clear that there was an Order entered on September 24, 2001 assuming and assigning a number of contracts including contracts with the Respondents. The Respondents never filed any response to the Trustee's motion to assume and assign, never filed an appeal of the Assignment Order, and whatever was intended to be assumed and assigned in the Assignment Order stands assumed and assigned to DM.

C. During the course of this hearing, counsel for Respondents indicated that Respondents were taking the position in other litigation that a principal of the debtor, John Abbey, represented that he had terminated or somehow effected the Collipark and Crooms Agreements. The Court notes, and it should be very clear, that Mr. Abbey never took such a position in the course of any of the lengthy proceedings that took place in this case. And, in fact, Mr. Abbey was present at all of the hearings dealing with the sale of the Ichiban assets and never indicated that the Collipark and/or Crooms Agreements were not

in full force and effect.

SO ORDERED, this 27th day of September 2004.

Joyce Bihary
Joyce Bihary, Chief Judge
United States Bankruptcy Court

Respectfully submitted,

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express
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